

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0166
Gross Income Tax and Adjusted Gross Income Tax
For the Years 1993, 1996-1999

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Adjusted Gross Income Tax -- Property factor

Authority: Ind. Code § 6-8.1-5-1; 45 IAC 3.1-1-44.

Taxpayer protests the Department's change in its property value for apportionment purposes.

II. Gross income tax—Out-of-state sales and agency

Authority: Ind. Code § 6-2.1-1-10; Ind. Code § 6-8.1-5-1; *Indiana Dept. Of Revenue v. Surface Combustion Corp.*, 111 N.E.2d 50 (Ind. 1953).

Taxpayer protests the imposition of gross income tax with respect to the sale of tangible personal property that it claimed was produced outside Indiana for assembly in Indiana, or alternatively that it received the proceeds in an agency capacity, and that the proceeds it received were not subject to a markup.

STATEMENT OF FACTS

Taxpayer is a business engaged in the manufacture of steam generating and related equipment. Taxpayer was audited for the years in question. Taxpayer has protested three aspects of the assessment. The first aspect was that the Department auditor included property in Indiana at a different value than taxpayer had listed it, which changed taxpayer's apportionment factors. Second, taxpayer protested an assessment of gross income tax for various contracts for which taxpayer maintains were not Indiana sales for gross income tax purposes, or alternatively that it was an agent for another affiliated company. Third, with respect to the payments made by taxpayer to the affiliated company, the taxpayer protested the addition of a ten percent markup from the amount ultimately received by the affiliated company.

I. Adjusted Gross Income Tax- Property factor

DISCUSSION

First, taxpayer protests the value of a parcel of real estate in Indiana. The real estate in question had a plant located on it, which for several years had been engaged in production. However, due to a change in market circumstances that substantially reduced demand for its key product, the plant was forced to shut down. The county and taxpayer agreed to a lower value for the real estate for property tax purposes based on the lack of economic usefulness of the real estate and building. The Department, however, used the value based on the historical cost listed on the taxpayer's federal income tax return.

Per 45 IAC 3.1-1-44, "[p]roperty owned by the taxpayer is valued at original cost. If the original cost cannot be ascertained, the property is valued at fair market value as of the date of acquisition by the taxpayer." As such, the Department's determination of the value of the real estate must stand, notwithstanding future events that reduced the property's actual value.

FINDING

Taxpayer's protest is denied.

II. Gross income tax- Out of state sales and agency

DISCUSSION

Second, taxpayer argues that certain gross receipts that it received were not taxable. Two subarguments exist here. First, taxpayer argues that manufactures the products outside Indiana, and that only the installation occurs in Indiana. Thus, under the holding of *Indiana Dept. Of Revenue v. Surface Combustion Corp.*, 111 N.E.2d 50 (Ind. 1953), in which a transaction involving tangible personal property manufactured outside Indiana but assembled at a business site in Indiana was held to be exempt from gross income tax, taxpayer's sales would be exempt. However, taxpayer has not provided sufficient information to substantiate this argument, and accordingly has not met its burden per Ind. Code § 6-8.1-5-1.

In the alternative, taxpayer asserts that it is merely a passthrough entity. In particular, taxpayer states that it divided several years ago into two separate corporations. One corporation—the taxpayer in this case—is responsible for manufacturing property, while the other is engaged solely in installation and construction of that property. In general, when a customer wished to have the property installed at the customer's facility, the customer would contract with the corporation whose business was installation. However, for various reasons largely related to liability, some contracts would indicate that the taxpayer was to receive the proceeds for the installation. In turn, taxpayer would pay the proceeds to the installing corporation. Taxpayer has argued that this created an agency relationship which would exempt the taxpayer's proceeds from gross income tax under Ind. Code § 6-2.1-1-10 (repealed effective January 1, 2003). However, taxpayer has not provided sufficient information to substantiate this argument, and accordingly has not met its burden per Ind. Code § 6-8.1-5-1.

Taxpayer also protested a ten percent markup based on the amounts that the installing corporation received. Here, taxpayer has provided sufficient documentation to conclude that the manufacturing corporation's proceeds were exactly those received by the installing corporation-no more and no less. Accordingly, this portion of the protest should be sustained.

FINDING

Taxpayer's protest is sustained with respect to the markup used by the auditor. Taxpayer's protest is otherwise denied.

JR/PE/JS 051003